

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BIENVENIDO FRANCO, WILLIAM FRASER, BRIAN  
McCABE, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

MEMORANDUM & ORDER  
07-CV-3956 (JS)(AKT)

-against-

IDEAL MORTGAGE BANKERS,LTD., d/b/a LEND  
AMERICA, ET AL.,

Defendants.

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APPEARANCES:

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For Defendants:  
Ideal Mortgage No appearances.

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SEYBERT, District Judge:

Pending before the Court is Magistrate Judge A. Kathleen Tomlinson's Report & Recommendation ("R&R"), issued August 23, 2010. For the foregoing reasons, the Court ADOPTS this R&R in its entirety.

#### BACKGROUND

Plaintiffs brought this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., on behalf of themselves and all other current and former employees of Lend America, Inc. who worked as loan officers during the applicable limitations period, to recover unpaid wages from Ideal Mortgage Bankers, Ltd d/b/a Lend America, Inc. ("Lend America"), and Lend America officers Michael Ashley, Timothy Mayette, Helene Decillis and Michael Primeau.

Lend America answered Plaintiffs' Complaint, First Amended Complaint, and Second Amended Complaint, asserting various defenses to Plaintiffs' claims. But, in December 2009, Lend America's attorneys moved to withdraw as counsel, and the Court granted this motion in January 2010. One week later, Plaintiff moved for a default judgment against Lend America, arguing that a default was warranted because Lend America was no

longer represented by counsel, and a corporation cannot appear pro se.

The Court referred Plaintiffs' motion to Magistrate Judge A. Kathleen Tomlinson. On August 23, 2010, Judge Tomlinson issued the R&R recommending that: (1) Plaintiffs' motion be denied; but (2) an Order be issued directing Lend America to retain counsel by a date certain. No party has filed any objections to this R&R.

#### DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotations omitted).

Here, no party has objected to Judge Tomlinson's R&R. And the Court finds her R&R to be correct, comprehensive, well-reasoned, and free of any clear error. Accordingly, the Court ADOPTS it in its entirety.

#### CONCLUSION

Plaintiffs' motion for a default judgment (Docket No. 179) is DENIED. Lend America is ORDERED to retain counsel by October 15, 2010. Lend America is further WARNED that failure

to retain counsel by October 15 may result in the entry of a default judgment against it. Plaintiffs are ORDERED to serve a copy of this Order upon Lend America, and Lend America's former counsel-of-record.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: September 17, 2010  
Central Islip, New York